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Medieval Sourcebook: Corpus Iuris Civilis: The Digest and Codex: Marriage Laws

Roman law developed as a mixture of laws, senatorial consults, imperial decrees, case law, and opinions issued by jurists. One of the most long lasting of Justinian's actions was the gathering of these materials in the 530s into a single collection, later known as the Corpus Iuris Civilis

[The Code of Civil Law]. The text is of historical importance for a number of periods: first it illuminates the Roman society of the time the individual parts were first written; next it says a great deal about 6th century Byzantium both in the selection criteria, and in the laws made specifically by Justinian; and finally it was of tremendous importance in later Western Europe where it provided, after the 11th century, the basis for the development of both Church, or "canon" law and the civil law of most European countries except England. As a system of law based on principles, not case law, it was re-invigorated by Napoleon and in that form remains the basis of the legal system of most of continental Europe, as well as the former colonial dependencies of those European countries [including most of Africa, China, Latin America and Japan]. It is also the basis of law in Louisiana and Quebec. In fact the only legal systems that rival Roman law in usage are the Anglo-American "common law" tradition, and the Islamic Sharia.

*The texts here address the issue of marriage, and date back particularly to the time of Augustus [r. 27BCE-14CE] who was very concerned about family matters and ensuring a large population. In the selections that follow the first part comes from the **Digest** and contain the opinions on marriage law of famous lawyers - Marcianus, Paulus, Terentius Clemens, Celsus, Modestinus, Gaius, Papinianus, Marcellus, Ulpianus, and Macer. Note that the most important were Papinianus (executed by the Emperor Caracalla in 212), who excelled at setting forth legal problems arising from cases, and Ulpianus (d. 223), who wrote a commentary on Roman law in his era. All these were legal scholars of the Roman imperial period whose works were considered important enough to keep in the Digest. The second section, from the **Codex** contain the later receipts of emperors concerning marriage law and punishments. IN the Corpus individual authors were identified, and these names have been kept here.*

DIGEST

Book XXIII. Title II. On the Marriage Ceremony.

19. Marcianus, Institutes, Book XVI.

In the Thirty-fifth Section of the Lex Julia [a law of Augustus in 18BCE which made marriage a duty for Roman patricians], persons who wrongfully prevent their children, who are subject to their

authority, to marry, or who refuse to endow them, are compelled by the proconsuls or governors of provinces, under a Constitution of the Divine Severus [r. 193-211] and Antoninus [ie Caracalla, r. 212-217], to marry or endow their said children. They are also held to prevent their marriage where they do not seek to promote it.

20. Paulus, On the Rescript of the Divine Severus and Commodus [r. 180-192]

It must be remembered that it is not one of the functions of a curator [legal guardian for a minor] to see that his ward is married, or not; because his duties only relate to the transaction of business. This Severus and Antoninus stated in a Rescript [a response to legal questions from officials] in the following words: "It is the duty of a curator to manage the affairs of his ward, but the ward can marry, or not, as she pleases.

21. Terentius Clemens, On the Lex Julia et Papia, Book III.

[The Lex Papia of 9CE was treated with the Lex Julia. It tried to make Romans marry within their class]

A son under paternal control cannot be forced to marry.

22. Celsus, Digest, Book XV.

Where a son, being compelled by his father, marries a woman whom would not have married if he had been left to the exercise of his own free will, the marriage will, nevertheless, legally be contracted; because it was not solemnized against the consent of the parties, and the son is held to have preferred to take this course.

23. The Same, Digest, Book XXX.

It is provided by the Lex Papia that all freeborn men, except senators and their children, can marry freedwomen.

24. Modestinus, Rules, Book I.

Where a man lives with a free woman, it is not considered concubinage but genuine matrimony, if she does not acquire gain by means of her body.

25. The Same, Rules, Book II.

A son who has been emancipated can marry without the consent of his father, and any son that he may have will be his heir....

28. Marcianus, Institutes, Book X.

A patron cannot marry his freedwoman against her consent....

30. Gains, On the Lex Julia et Papia, Book II.

A pretended marriage is of no force or effect....

34. Papinianus, Opinions, Book IV.

Where a general commission has been given to a man by someone to seek husband for his daughter, this is not sufficient ground for the conclusion a marriage. Therefore it is necessary that the person selected should be introduced to the father, and that he should consent to the marriage, order for it to be legally contracted....

(2) Marriage can be contracted between stepchildren, even though they have a common brother, the issue of the new marriage of their parents.

(3) Where the daughter of a senator marries a freedman, this unfortunate act of her father does not render her a wife, for children should not be deprived of their rank on account of an offence of their parent....

41. Marcellus, Digest, Book XXVI.

It is understood that disgrace attaches to those women who live unchastely, and earn money by prostitution, even if they do not do so openly. (1) If a woman should live in concubinage [this was legal state of sexual domestic partnership without official "marriage" (connubium) or dowry] with someone besides her patron, I say that she does not possess the virtue of the mother of a family

42. Modestinus, On the Rite of Marriage.

In unions of the sexes, it should always be considered not only what is legal, but also what is decent.

(1) If the daughter, granddaughter, or great-granddaughter of a senator should marry a freedman, or a man who practices the profession of an actor, or whose father or mother did so, the marriage will be void.

43. Ulpianus, On the Lex Julia et Papia, Book I.

We hold that a woman openly practices prostitution, not only where she does so in a house of ill-fame, but also if she is accustomed to do this in taverns, or in other places where she manifests no regard for her modesty.

(1) We understand the word "openly" to mean indiscriminately, that is to say, without choice, and not if she commits adultery or fornication, but where she sustains the role of a prostitute.

(2) Moreover, where a woman, having accepted money, has intercourse with only one or two persons, she is not considered to have openly prostituted herself.

(3) Octavenus [a minor Roman jurist], however, says very properly that where a woman publicly prostitutes herself without doing so for money, she should be classed as a harlot.

(4) The law brands with infamy [not just a bad reputation but a legal state which removed certain legal protections] not only a woman who practices prostitution, but also one who has formerly done so, even though she has ceased to act in this manner; for the disgrace is not removed even if the practice is subsequently discontinued.

(5) A woman is not to be excused who leads a vicious life under the pretext of poverty.

(6) The occupation of a pander is not less disgraceful than the practice of prostitution.

(7) We designate those women as procuresses who prostitute other women for money....

(9) Where one woman conducts a tavern, and keeps others in it who prostitute themselves, as many are accustomed to do under the pretext of employing women for the service of the house; it must be said that they are included in the class of procuresses....

(12) Where a woman is caught in adultery, she is considered to have been convicted of a criminal offence. Hence if she is proved to have been guilty of adultery, she will be branded with infamy, not only because she was caught *flagrante delicto* [ie in the act of committing an obvious wrong], but also because she was convicted of a criminal offence. If, however, she was not caught, but was, nevertheless, found guilty, she becomes infamous because she was convicted of a criminal offence; and, indeed, if she was caught but was not convicted, she would still be infamous. I think that even if she should be acquitted after having been caught, she will still remain infamous, because it is certain that she was taken in adultery, and the law renders the act infamous and does not make this dependent upon the judicial decision.

(13) It is not mentioned here, as in the Lex Julia on adultery, by who or where the woman must be caught; hence she is considered infamous whether she was caught by her husband or by anyone else. She will also be infamous according to the terms of the law, even if she was not caught in the house of her husband or her father....

45. Ulpianus, On the Lex Julia et Papia, Book III.

In that law which provides that where a freedwoman has been married to her patron, after separation from him she cannot marry another without his consent; we understand the patron to be one who has bought a female slave under the condition of manumitting her (as is stated in the Rescript of our Emperor and his father), because, after having been manumitted, she becomes the freedwoman of the purchaser....

Book XXVI. Title VII. Concerning Concubines.

1. Ulpianus, On the Lex Julia et Papia, Book II.

Where a freedwoman is living in concubinage with her patron, she can leave him without his consent, and unite with another man, either in matrimony or in concubinage. I think, however, that a concubine should not have the right to marry if she leaves her patron without his consent, since it is more honorable for a freedwoman to be the concubine of a patron than to become the mother of a family.

(1) I hold with Atilicianus, that only those women who are not disgraced by such a connection can be kept in concubinage without the fear of committing a crime....

(3) If a woman has lived in concubinage with her patron, and then maintains the same relation with his son or grandson, I do not think that she is acting properly, because a connection of this kind closely approaches one that is infamous, and therefore such scandalous conduct should be prohibited.

(4) It is clear that anyone can keep a concubine of any age unless she is less than twelve years old.

2. Paulus, On the Lex Julia et Papia, Book XII.

Where a patron, who has a freedwoman as his concubine, becomes insane, it is more equitable to hold that she remains in concubinage.

3. Marcianus, Institutes, Book XII.

The freedwoman of another can be kept in concubinage as well as a woman who is born free, and this is especially the case where she is of a low origin, or has lived by prostitution; otherwise if a man prefers to keep a woman of respectable character and who is free born in concubinage, it is evident that he can not be permitted to do so without openly stating the fact in the presence of witnesses; but it will be necessary for him either to marry her, or if he refuses, to subject her to disgrace.

(1) Adultery is not committed by a party who lives with a concubine because concubinage obtains its name from the law, and does not involve a legal penalty; as Marcellus states in the Seventh Book of the Digest.

4. Paulus, Opinions, Book XIX.

The woman must be considered a concubine even where only the intention to live with her is manifested.

5. The Same, Opinions, Book II.

An official who is a resident of the province where he administers the duties of his office can keep a concubine....

Book XLVIII. Title V. Concerning the Julian Law for the Punishment of Adultery.

(2) The crime of pandering is included in the Julian Law on Adultery, as a penalty has been prescribed against a husband who profits pecuniarily by the adultery of his wife; as well as against one who retains his wife after she has been taken in adultery.

(3) Moreover, he who permits his wife to commit this offence, holds his marriage in contempt; and where anyone who does not become indignant on account of such pollution, the penalty of adultery is not inflicted.

(4) Anyone who alleges that he has committed adultery with the assistance of the husband, desires, indeed, to lessen his crime, but an excuse of this kind is not admitted. Therefore, if the defendant should wish to denounce the husband for having acted as a pander, he shall not be heard, if he has once been accused....

(6) Hence it may be asked whether he who has cognizance of the prosecution for adultery can decide against the husband because of his having acted as a pander? I think that he can do so. For Claudius Gorgus, a most illustrious man, having accused his wife, and it having been ascertained that although he had caught her in adultery he still kept her, was condemned by the Divine Severus for being guilty of pandering, without any accuser having appeared against him....

(8) If the husband and the father of the woman appear at the same time for the purpose of accusing her, the question arises, which of them should be given the preference by the Praetor? [one of the Roman magistrates] The better opinion is, that the husband should be entitled to the preference, for it may well be believed that he will prosecute the accusation with greater anger and vexation. This is so far true, that even where the father has already appeared, and filed the papers containing the accusation, if the husband has not been negligent or guilty of delay, but is himself prepared to bring the accusation, and introduce evidence, and fortify it, in order that the case may be the more easily proved before the judges, the same thing must be said....

6. Papinianus, On Adultery, Book I.

The Julian Law only applies to free persons who have been the victims of adultery or debauchery. With reference to female slaves, recourse can easily be had to the action authorized by the Aquilian Law [a basic law of delicts from the 3rd century BCE], and that for injury will also lie, and the Praetorian action for the corruption of a slave will not be refused; so that the person guilty of this crime will not escape on account of the multiplicity of actions. [In Roman law, action is the term for a legal remedy and the procedures to pursue it.]

(1) The law promiscuously and incorrectly designates the same crime by the terms debauchery and adultery. Properly speaking, adultery is only committed with a married woman; this name having been adopted on account of the child being begotten by another than the husband. Debauchery, which the Greeks call "corruption," is committed with a virgin, or a widow....

8. Papinianus, On Adultery, Book II.

Anyone who knowingly lends his house to enable debauchery or adultery to be committed there with a matron who is not his wife, or with a male, or who pecuniarily profits by the adultery of his wife, no matter what may be his status, is punished as an adulterer.

(1) It is clear that by the term "house" every kind of habitation is meant....

10. Papinianus, On Adultery, Book II.

A matron means not only a married woman, but also a widow.

(1) Women who lend their houses, or have received any compensation for debauchery which they have committed, are also liable under this Section of the law.

(2) A woman who gratuitously acts as a bawd for the purpose of avoiding the penalty for adultery, or hires her services to appear in the theatre, can be accused and convicted of adultery under the Decree of the Senate....

(11) Although a woman may be alleged to have married him with whom she is suspected of having committed adultery, she cannot be accused before the adulterer has been convicted. Otherwise, husbands desiring to have marriages, which have subsequently been contracted, annulled, would have recourse to this pretext, and say that their wives had married men with whom they had committed adultery.

(12) A woman, having heard that her absent husband was dead, married another, and her first husband afterwards returned. I ask, what should be decided with reference to this woman? The answer was that the question is one of law and not of fact; for if a long time had elapsed without any proof of debauchery having been made, and the woman, having been induced by false rumors, and, as it were, released from her former tie, married a second time in accordance with law, as it is probable that she was deceived, and she can be held to have done nothing deserving of punishment. If, however, it is established that the supposed death of her husband furnished an inducement for her marrying a second time, as her chastity is affected by this fact, she should be punished in proportion to the character of the offence.

(13) I married a woman accused of adultery, and, as soon as she was convicted, I repudiated her. I ask whether I should be considered to have furnished the cause of the separation. The answer was that, since by the Julian Law you are prohibited from keeping a wife of this kind, it is clear that you should not be considered to have furnished the cause for the separation. Therefore, the law will be applied just as if a divorce had taken place through the fault of the woman....

13. Ulpianus, On Adultery, Book II.

Where a wife did not commit adultery, but a concubine did, the husband cannot accuse her as such, because she is not his wife; still, he is not prohibited by law from bringing an accusation as a stranger, provided that she, in giving herself as a concubine, did not forfeit the name of a matron, as, for instance, a woman who had been the concubine of her patron....

(5) The judge who has jurisdiction of adultery must have before his eyes, and investigate whether the husband, living modestly, has afforded his wife the opportunity of having good morals; for it would be considered extremely unjust for the husband to require chastity for his wife, which he himself does not practice. This, indeed, may condemn the husband, but cannot afford a set-off for mutual crime when committed by both parties.

(6) If anyone wishes to accuse his wife, and alleges that she committed adultery before he married her, he cannot bring the accusation by his right as a husband, because she did not commit adultery while she was married to him.

This can also be said with reference to a concubine whom the man who kept her subsequently married; or with reference to a daughter under paternal control, to whose union her father afterwards gave his consent....

20. Papinianus, On Adultery, Book I.

The right is granted to the father to kill a man who commits adultery with his daughter while she is under his control. Therefore no other relative can legally do this, nor can a son under paternal control, who is a father, do so with impunity.

21. Ulpianus, On Adultery, Book I.

Hence it happens that neither the father nor the grandfather can kill the adulterer. This is not unreasonable, for he cannot be considered to have anyone under his control who has not control of himself.

22. Papinianus, On Adultery, Book I.

In this law, the natural father is not distinguished from the adoptive father.

(1) In the accusation of his daughter, who is a widow, the father is not entitled to the preference.

(2) The right to kill the adulterer is granted to the father in his own house, even though his daughter does not live there, or in the house of his son-in-law....

(4) Hence the father, and not the husband, has the right to kill the woman and every adulterer; for the reason that, in general, paternal affection is solicitous for the interests of the children, but the heat and impetuosity of the husband, who decides too quickly, should be restrained.

23. Ulpianus, On Adultery, Book I.

What the law says, that is, "If he finds a man committing adultery with his daughter," does not seem to be superfluous; for it signifies that the father shall have this power only when he surprises his daughter in the very act of adultery. Labeo" also adopts this opinion; and Pomponius says that the man must be killed while in the very performance of the sexual act....

(1) It is sufficient for the father for his daughter to be subject to his authority at the time when he kills the adulterer, although she may not have been at the time when he gave her in marriage; for suppose that she had afterwards come under his control.

(2) Therefore the father shall not be permitted to kill the parties wherever he surprises them, but only in his own house, or in that of his son-in law. The reason for this is, that the legislator thought that the injury was greater where the daughter caused the adulterer to be introduced into the house of her father or her husband.

(3) If, however, her father lives elsewhere, and has another house in which he does not reside, and surprises his daughter there, he cannot kill her.

(4) Where the law says, "He may kill his daughter at once;" this must be understood to mean that having to-day killed the adulterer he can not reserve his daughter to be killed subsequently; for he should kill both of them with one blow and one attack, and be inflamed by the same resentment against both. But if, without any connivance on his part, his daughter should take to flight, while he is killing the adulterer, and she should be caught and put to death some hours afterwards by her father, who pursued her, he will be considered to have killed her immediately.

24. Macer, Public Prosecutions, Book I.

A husband is also permitted to kill a man who commits adultery with his wife, but not everyone without distinction, as the father is; for it is provided by this law that the husband can kill the adulterer if he surprises him in his own house, but not if he surprises him in the house of his father-in law; nor if he was formerly a pander; or had exercised the profession of a mountebank, by dancing or singing on the stage; or had been convicted in a criminal prosecution and not been restored to his civil rights; or is the freedman of the husband or the wife, or of the father or mother, or of the son or the daughter of any of them; nor does it make any difference whether he belonged exclusively to one of the persons above mentioned, or owed services to two patrons in common, or was a slave.

(1) It is also provided that a husband who has killed any one of these must dismiss his wife without delay.

(2) It is held by many authorities to make no difference whether the husband is his own master, or a son under paternal control.

(3) With reference to both parties, the question arises, in accordance with the spirit of the law, whether the father can kill a magistrate; and also where his daughter is of bad reputation, or has been illegally married, whether the father or the husband will still retain his right; and what should be done if the husband is a pander, or is branded with ignominy for some reason or other. It may properly be held that those have a right to kill who can bring an accusation as a father or a husband.

25. Ulpianus, On the Julian Law Relating to Adultery, Book II.

It is provided as follows in the Fifth Section of the Julian Law: "That where a husband has surprised an adulterer with his wife, and is either unwilling or unable to kill him, he can hold him for not more than twenty consecutive hours of the day and night, in order to obtain evidence of the crime, and make use of his right without endangering it."

(5) The following clause, "In order to obtain evidence of the crime," means that he can introduce witnesses who will afterwards testify that the offender was taken in adultery.

26. The Same, Disputations, Book III.

A woman cannot be accused of adultery during marriage by anyone who, in addition to the husband, is permitted to bring the accusation; for a stranger should not annoy a wife who is approved by her husband, and disturb a quiet marriage, unless he has previously accused the husband of being a pander.

(1) When, however, the charge has been abandoned by the husband, it is proper for it to be prosecuted by another....

CODEx

Book IX. Title IX. On the Lex Julia Relating to Adultery and Fornication.

1. The Emperors Severus and Antoninus to Cassia. [198CE]

The Lex Julia declares that wives have no right to bring criminal accusations for adultery against their husbands, even though they may desire to complain of the violation of the marriage vow, for while the law grants this privilege to men it does not concede it to women....

2. The Same Emperors to Cyrus. [200CE]

Those are guilty of the crime of pimping who allow their wives taken in adultery to remain in marriage, and not those who merely suspect their wives of having committed adultery....

3. The Emperor Antoninus to Julianus. [214CE]

Not only the words of the Lex Julia concerning the repression of adultery, but also the spirit of the law, authorize a husband who desires to prove that his wife has been guilty of adultery to do so by torturing slaves of both sexes; and this applies only to the slaves of the persons specially mentioned in the law, that is to say, the woman, and her natural, not her adoptive father; and it forbids the said slaves to be either manumitted or sold within the term of sixty days, to be computed from the date of the dissolution of the marriage, and requires the husband to furnish a bond to the owners of said slaves to indemnify them, if the former should die under torture, or become deteriorated in value, and the woman be acquitted

4. The Emperor Alexander to Julian, Proconsul of the Province of Narbonne. [n.d.]

If Numerius, who killed Gracchus at night in the act of adultery, did so under such circumstances that he could have taken his life with impunity by virtue of the Lex Julia, what was lawfully done will incur no penalty.

The same rule applies to sons who have obeyed the orders of their father, in a case of this kind. If, however, the husband, rendered insane by grief, killed the adulterer without being legally authorized to do so, even though the homicide may have been excusable, still, because it was committed at night, and his just grief diminished the criminality of the act, he can be sent into exile....

7. The Same Emperor to Herulanus. [224CE]

The man who afterwards married her cannot be a lawful accuser, where an adult virgin was violated before her marriage; and therefore he cannot prosecute the crime as her husband, unless he was betrothed to the girl who was violated. If, however, she herself, with the assistance of her curators by whom her affairs were transacted, should prosecute for the injury committed upon her, the Governor of the province will impose a severe sentence in accordance with what is required by law for a crime of this kind, if its commission should be established....

9. The Same Emperor to Proculus. [225CE]

It is proper for the preservation of virtue during My reign that a woman convicted under the Lex Julia concerning chastity should suffer the legal penalty.

Moreover, anyone that knowingly marries, or takes back a woman convicted of adultery, who has in some way evaded the penalty prescribed for her crime, shall be punished by the same law as a procurer....

10. The Same Emperor to Demetrianus. [226CE]

It is not lawful to condone the crime of adultery, and he who is guilty of collusion is in the same position as one who refuses to reveal the truth. Moreover, he who accepts a sum of money to desist from prosecution, in a case where adultery has been discovered, is liable to the penalty imposed by the Lex Julia.

11. The Same Emperor to Narvanus.

No one doubts that a husband cannot accuse his wife of adultery if he continues to retain her in marriage....

Extract from Novel 117, Chapter XVIII. Latin Text. [542CE]

Under the new law, however, he can do so, and if the accusation is proved to be true, he can then repudiate her, and he should file a written accusation against her. If, however, the husband should not be able to establish the accusation of adultery which he brought, he will be liable to the same punishment which his wife would have undergone if the accusation had been proved.

12. The Same Emperor to Bassus. [241CE]

Although, as you allege, he who was convicted of the crime of adultery was not restored to his civil rights; still, since your sister, with whom the adultery was said to have been committed, was not accused, she could not have been subjected to any penalty, or rendered infamous, especially as you state that the accuser afterwards died....

18. The Same Emperors [Valerian and Gallienus] and the Caesar Valerian to Theodora. [259CE]

There is no doubt that he who has two wives at once is branded with infamy, for, in a case of this kind, not the operation of the law by which Our citizens are forbidden to contract more than one marriage at a time, but the intention, should be considered; and therefore he who pretended to be unmarried, but had another wife in the province, and asked you to marry him, can lawfully be accused of the crime of fornication, for which you are not liable, for the reason that you thought that you were his wife. You can obtain from the Governor of the province the return of all your property of which you deplore the loss on account of the fraudulent marriage, and which should be restored to you without delay. But how can u recover what he promised to give you as his betrothed? ...

20. The Same Emperors [Diocletian and Maximian] and Caesars to Didymus. [290CE]

The laws punish the detestable wickedness of women who prostitute their chastity to the lusts of others, but does not hold those liable who are compelled to commit fornication through force, and against their will. And, moreover, it has very properly been decided that their reputations are not lost, and that their marriage with others should not be prohibited on this account....

22. The Same Emperors and Caesars to Oblimosus. [290CE]

If a woman whom you have carnally known indiscriminately sold herself for money, and prostituted herself everywhere as a harlot, you did not commit the crime of adultery with her....

25. The Same Emperors and Caesars to Sossianus. [291CE]

Although it is established by the contents of certain documents that you are consumed with the lust of immoderate desire, still, as it has been ascertained that you confined yourself to female slaves, and did not have intercourse with free women, it is clear that by a sentence of this kind your reputation suffers, rather than that you become infamous....

27. The Same Emperors and Caesars to Phoebus. [292CE]

Adultery committed with a man whom a woman afterwards married is not extinguished by the fact of the marriage....

29. The Emperor Constantine to Africanus. [326CE]

It should be ascertained whether the woman who committed adultery was the owner of the inn, or only a servant; and if, by employing herself in servile duties (which frequently happens), she gave occasion for intemperance, since if she were the mistress of the inn, she will not be exempt from liability under the law.

Where, however, she served liquor to the men who were drinking, she would not be liable to accusation as having committed the offense, on account of her inferior rank, and any freemen who have been accused shall be discharged, as the same degree of modesty is required of these women as of those who are legally married, and bear the name of mothers of families.

Those, also, are not subject to judicial severity who are guilty of fornication or adultery, and the vileness of whose lives does not render them worthy of the attention of the law....

30. The Same Emperor to Evagrius. [326CE]

Although the crime of adultery is included among public offenses, the accusation of which is granted to all persons without distinction, still, in order that those who inconsiderately wish to cause discord in households may not be allowed to do so, it is hereby decreed that only the nearest relatives of the guilty party shall have the power to bring the accusation; that is to say, the father, the brother, and the paternal and maternal uncles, whom genuine grief may impel to prosecute. We, however, also give the said persons permission to revoke the accusation, by withdrawing it, if they should so desire.

The husband, above all others, should be considered the avenger of the marriage bed, for he is permitted to accuse his wife on suspicion, and he is not forbidden to retain her, if he only suspects her; nor will he be liable if he files a written accusation when he accuses her as her husband, a privilege which was established by former Emperors....

Extract from Novel 134, Chapter X. Latin Text. [556CE]

At present, however, a woman convicted of adultery is placed in a monastery, from which her husband is permitted to remove her within the term of two years. After the two years have expired, without her husband having taken her back, or, before that, if he should have died, the adulteress, having had her head shaved, and assumed a religious habit, shall remain there during lifetime, and her property, if she has any, shall be divided into three parts, two of which should be given to her children, and the third to the monastery. When she has no children, and her parents are living and did not consent to her crime, they shall receive a third part of her property, and the monastery two-thirds

of the same. If her aforesaid relatives are not living, all of her property shall be acquired by her monastery, and, in every instance, all rights under dotal agreements are reserved for the benefit of the husband....

33. The Emperors Theodosius, Arcadius, and Honorius to Rufinus, Praetorian Prefect. [392CE]

When a charge of adultery has been made, We order that all civil exceptions by means of which a dowry may be claimed, or any other debt demanded, and which are ordinarily pleaded and examined, to be set aside, and that the progress of the case shall not be delayed through their inter-position. But when the accusation has been formulated, that is to say, when it has been regularly instituted, whether it was filed under the right of a husband, or under that of a stranger, the crime shall be investigated, the evidence produced, the more important matters in dispute settled, and all civil actions be subordinated to the criminal prosecution. The woman will afterwards have the right to begin any civil proceedings to which he is entitled, provided they do not interfere with the conduct of the criminal case....

from S.P. Scott, trans, *The Civil Law*, (Cincinnati: The Central Trust, 1932), reprinted in Richard M. Golden and Thomas Kuehn, eds., *Western Societies: Primary Sources in Social History, Vol I*, (New York: St. Martin's Press, 1993), with indication that this text is not under copyright on p. 329.

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